IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6846 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJ JAI ENTERPRISES

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

Mr. S.K. Patel, Ld. AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 05/05/2000

ORAL JUDGEMENT

This Petition has been filed by Raj Jai Enterprise, a wholesale dealer in edible and vegetable oils. During stock verification some quantities of edible oil and Vanaspati oil was found to be in excess in stock of the petitioner in his godown. Accordingly the

District Civil Supplies Officer after issuing show cause notice confiscated 267 tins of vanaspati oil in the godown of the petitioner. The Deputy Secretary (Food & Civil Supplies) Department issued show cause notice to the petitioner for keeping excess stock beyond the permissible limit of 250 quintals vegetable oil. After hearing the petitioner, the Deputy Secretary confiscated 87 tins of vanaspati oil. Having felt aggrieved by the order of the Deputy Secretary, the petitioner filed appeal to the State Government, and the State Government in the appeal after considering all the facts and circumstances of the case, and after observing that there was no bad intention on the part of the petitioner for maintaining the excess stock; reduced the confiscation of vanaspati oil to the extent of 39 tins, and also released another 48 tins to the petitioner. Having felt aggrieved by the order of the Government the petitioner has filed present writ petition.

2. Apart from the show cause notice for keeping excess vegetable oil, the petitioner was also issued another show cause notice for keeping six tins of Kapasia refined oil in his godown. However, so far the excess stock of kapasiya refined oil is concerned, the petitioner was exonerated. Eventhough 39 tins were confiscated by the Government, those were released by an order of the Government after obtaining a Bank Guarantee of Rs.30,000/- from the petitioner. The petitioner after receiving 39 tins of vanaspati oil distributed the same through PDS. Now the only question, that is raised for the decision is, whether the order passed by the Government regarding confiscation of 39 tins of vanaspati oil is legal and proper.

3. Mr. Navin Pahuwa, learned counsel appearing on behalf of the petitioner submitted that the petitioner is a wholesale dealer, and when the inspection was carried out, at that time there was a transport strike; and therefore, the petitioner with a view to maintain regular supply of edible oil and vanaspati oil to the retailers and to the PDS shops had to keep stocks of edible oil and vanaspati, so that the supply may not suffer for want of supply of edible oil and vegetable oil. It is also submitted by the learned counsel for the petitioner that, according to the order of the Central Government the petitioner as a wholesaler is entitled to keep 250 quintals of vegetable oils in his godown. But since there was transport strike and uncertainity in the supply of edible and vanaspati oil, the petitioner had to keep some extra stock . After getting this extra stock he has maintained all the records in appropriate manner, proper

entries were made in the register regarding extra stock retained by the petitioner in his godown. Those were reflected in all the registers maintained by him in his shop premises. Learned counsel therefore submitted that, since the petitioner had no ill-motive to sell the edible or vegetable oil in black market against high price, he cannot be said to have committed any illegality in maintaining the extra stock which he has reflected in all the registers. Learned counsel therefore submitted that, having regard to the situation prevalent at that time, the petitioner cannot be said to have committed any offence by keeping a small quantity of extra stock in his godown. Learned counsel consequently submitted that the Bank Guarantee furnished by the petitioner should be released.

4. Mr. S.K. Patel, learned AGP representing the respondent State submitted that, according to the Government order the petitioner is entitled to keep 250 quintals of vegetable oil in his stock as a wholesale dealer. In the instant case he has kept 87 tins of vegetable oil in excess of the permissible limit of 250 quintals. Therefore confiscation of 39 tins of vegetable oil is legal and proper. Learned AGP also submitted that the Government has taken a lenient view to the petitioner and as against the excess stock of 87 tins of vegetable oil, 39 tins of vegetable oil have been confiscated to the State Government. Learned AGP consequently submitted that, since the leniency has already shown to the petitioner, no interference in the order passed by the Government is required.

5. It is true that, excess stock of 87 tins of vegetable oil were found in the godown of he petitioner. Before a person is punished, it must be seen whether he had any intention to keep excess stock with a view to sell the same in black market or to sell the same at higher price. It is admitted that the petitioner is a wholesale dealer and is selling edible and vegetable oils to the dealers and through PDS. It is not denied that the petitioner is maintaining his stock in the stock register and other books maintained by him in his shop premises. The Government had already exonerated him for having 6 tins of Kapasia refined oil in excess of the permissible limit, but since he has maintained the stock properly, Government has exonerated him, eventhough he kept 6 tins of Kapasia refined oil in stock in excess of the permissible limit.

6. So far as the vegetable oil is concerned, it is an admitted fact that the petitioner was keeping 87 tins

of vegetable oil in excess of permissible limit of 250 quintals. In the present case also the Government has taken lenient view having regard to the fact that the petitioner has maintained the stock properly in the stock register. Learned counsel for the petitioner has drawn my attention to a case law reported in N. NAGENDRA RAO & CO. APPELLANT VS. STATE OF ANDHRA PRADESH, RESPONDENT, AIR 1994, S.C. 2663. It appears from the aforesaid case decided by the Apex Court that every contravention cannot entail confiscation. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock. Before any penal action is taken or confiscation order is made it is necessary to see whether the dealer is keeping the stock with a view to sell the same in the black market with higher price.

7. From the order of the State Government it is found that the petitioner has maintained his record for keeping the extra stock and the petitioner has explained for keeping such an extra stock. It is submitted by the learned counsel for the petitioner that in view of the transport strike he had to maintain some extra stock so as to maintain the supply of edible oil and vanaspati oil to the consumers through retailers. Having regard to the fact that the petitioner has not concealed anything for keeping the extra stock, I am of the view that such an action on the part of the petitioner for keeping some extra stock of vegetable oil should not entail him to the punishment of confiscation. Therefore I am of the view that the order of the State Government confiscating 39 tins of vanaspati oil is not proper. Since the petitioner had no bad intention for keeping the extra stock and he has reflected the same in the stock register and other books of accounts, and in view of the fact that the petitioner has maintained such a small extra stock to ensure supply of edible and vegetable oil to the consumers, I am of the view that he do not deserve the punishment of confiscation for maintaining this extra stock. Therefore the order of the Government confiscating 39 tins of vegetable oil is required to be set aside. Accordingly the order of the State Government dated 30-4-1990 is hereby set aside. The Bank Guarantee furnished by the petitioner be released. This petition is accordingly allowed. Rule is made absolute to the aforesaid extent. Interim relief if any shall stand vacated. No order as to costs.

Dt: 5-5-2000

(P.K. Sarkar, J)

/vgn.